

# Exhibit B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA, EX )  
REL. MICHAEL N. SWETNAM, JR. )  
 )  
Plaintiff, )  
 ) CASE NO. 1:08-CV-446  
VS. )  
 )  
VALLEY BAPTIST HEALTH )  
SYSTEM AND VALLEY BAPTIST )  
MEDICAL CENTER )  
 )  
Defendants. )

\*\*\*\*\*

VIDEOTAPED ORAL DEPOSITION  
OF MICHAEL N. SWETNAM  
OCTOBER 28, 2014

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ORAL DEPOSITION OF MICHAEL N. SWETNAM, produced as a witness at the instance of Defendants, and duly sworn, was taken in the above-styled and numbered cause on October 28, 2014, from 10:19 a.m. to 4:46 p.m. before Dawn Flippin, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine, at the Law Offices of Watts Guerra, LLP, 4 Dominion Drive, Building 3, Suite 100, San Antonio, Bexar County, Texas, pursuant to the Federal Rules and any provisions stated on the record or attached hereto.

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Dawn Flippin, CSR, Court Reporter - Magna Legal Services

Page 3

1

INDEX

Page

2

STIPULATIONS

1

3

APPEARANCES

2

4

WITNESS: MICHAEL N. SWETNAM

5

EXAMINATION BY:

6

Mr. Hanslick

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WITNESS CHANGES/CORRECTIONS

191

9

WITNESS SIGNATURE

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10

REPORTER'S CERTIFICATE

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12 Q And do you agree that when XOL was implemented in  
13 1993 by Valley Baptist, it was not based upon a physician  
14 referring patients into the hospital?

15 A That was inherent in the program, but they did not  
16 have to refer patients into Valley Baptist Medical Center.

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20 Q Would you also agree that the amount of insurance  
21 coverage that XOL provided to a physician was the same  
22 regardless of how many patients that doctor referred to Valley  
23 Baptist?

24 A I'm going to have to answer this this way.

25 Q Okay.

1           A     The limit was the same, yes.  However, the more  
2     patients that the doctor referred into or admitted into Valley  
3     Baptist would increase the exposure under the XOL.

4           Q     Okay.  And by exposure, you mean the more patients  
5     you see, the more likely someone might make a claim against  
6     the policy?

7           A     Yes.

8           Q     But as far as the -- the level of insurance that was  
9     provided to the doctor --

10          A     It was the same.

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12 (Deposition Exhibit Number 78 marked).

13 Q (By Mr. Hanslick) Let me hand you what I've marked  
14 as Exhibit 78. Exhibit 78 is an e-mail that you sent to Patsy  
15 Nichols relating to the XOL Program, correct?

16 A Yes.

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16           Q     Okay. So let's go through this. You start by  
17     saying: In response to your 5-4-98 letter to David Smith, the  
18     letter concerning the inurement tax issue was reviewed and  
19     provided by the accounting firm Coopers Lybrand and not your  
20     firm, right?

21           A     Yes, sir.

22           Q     Because she was asking for that letter she thought  
23     her firm had sent, right?

24           A     Yes, sir.

25           Q     You're setting her straight on that that she was

1 wrong?

2 A That -- that's -- from my memory, yeah, that's --  
3 that she was wrong, because I mean it was Coopers Lybrand -- I  
4 was told it was Coopers Lybrand who had done the tax portion  
5 of it.

6 Q Okay. Next paragraph: The hospital's XOL Program  
7 was never based upon the physician's referral of any patient  
8 to the hospital facility, right?

9 A Yes.

10 Q That's what you wrote?

11 A Yes, sir.

12 Q It was based and conditioned upon each participating  
13 physician's agreement to do three items. One, provide on-call  
14 in the hospital's emergency room. Two, to complete the  
15 patient's medical records within 30 days of the patient's  
16 discharge date. And three, to participate in the hospital's  
17 Q/A programs, right?

18 A Yes, sir.

19 Q When you wrote the first sentence of this letter to  
20 Ms. Nichols that the hospital's XOL Program was never based  
21 upon physician's referral of any patient to the hospital  
22 facility, that was an accurate statement, wasn't it?

23 A In part.

24 Q What do you mean in part?

25 A In -- in -- in part it was. There was nothing that

1 required a physician to refer any patient to Valley Baptist  
2 for coverage B -- or the second part of the coverage, private  
3 office practice. Nothing whatsoever.

4 However, in order for the XOL coverage to  
5 provide to a physician's hospital setting claim where a claim  
6 from a patient occurred at the hospital, it could only be at  
7 Valley Baptist.

8 So did it require the physician to refer the  
9 patient to Valley Baptist? Only in order to get the coverage  
10 for the hospital claim.

11 Q I understand. So there --

12 A Did it --

13 Q I'm sorry. Go ahead.

14 A Did it require the physician to refer the patient  
15 from his private office practice over to Valley Baptist? No.  
16 And he still got the private office practice claim, because it  
17 was the physician private office practice. So that's the  
18 reason for my response.

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10           Q     But there was nothing that required that the doctor  
11     refer the patient to Valley Baptist versus another hospital in  
12     and of itself; right?

13           A     No.

14           Q     In fact, in order to participate in the XOL Program,  
15     the doctor did not have to commit to only refer to Valley  
16     Baptist, right?

17           A     That's right.

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14 Q And -- and what you said is they're not required to  
15 refer any patient business whatsoever to the hospital?

16 A That's right.

17 Q And that wasn't something -- I mean that -- that's  
18 an accurate statement. That wasn't something you were forced  
19 or directed by Mr. McKibbens to write that you didn't believe,  
20 right?

21 A That was an accurate statement right there.

22

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24

25

1 A Yes.

2 Q And then you go on: The participating physician can  
3 place or refer any patient into any medical facility and/or  
4 clinical provider. The XOL Program's private office practice  
5 coverages are still applicable to that physician.

6 And that's what you wrote here, and that's  
7 consistent with what you and I just talked about, right?

8 A (Witness nods head).

9 Q What -- what part of Exhibit 78 do you believe you  
10 were forced to write against your will?

11 A I didn't -- I didn't like writing the fact that it  
12 required -- didn't require referral. To me in order to get  
13 the coverage, the patient had to go there and had to go to  
14 Valley Baptist. And referral to me just meant putting the  
15 patient in the hospital.

16 Q I understand. But you agree with me that the -- the  
17 doctor didn't have to commit to only refer to Valley Baptist  
18 in order to participate in XOL, right?

19 A He did not have -- he had -- he had to agree in  
20 order to get the coverage, he had to place the patient at  
21 Valley Baptist in order to get the coverage.

22 Q Right.

23 A The XOL coverage.

24 Q He didn't have to agree to that; that's just how it  
25 was set up. It was this insurance is available to you under

1 this program when you're seeing patients at our hospital,  
2 right?

3 MR. ALLRED: Objection, mischaracterizes his  
4 testimony.

5 Q (By Mr. Hanslick) I mean that -- the -- the  
6 parameters of the program were -- the XOL Program -- were if  
7 you're seeing a patient at our hospital and you're -- you've  
8 signed up for the XOL, then there is additional coverage that  
9 will be afforded to you, correct?

10 A Right.

11 Q If you see -- if you go to another hospital, this  
12 coverage won't travel with you?

13 A That's right.

14 Q Okay. But the doctors did not have to commit to  
15 only refer to Valley Baptist, right?

16 A That's right. They did not have to, but the way I  
17 looked at it and the way the plan was set up, it appeared to  
18 me that in order to get the coverage, they had to put them in  
19 there in Valley Baptist. In order for them to receive the XOL  
20 coverage, they had to put them in Valley Baptist.

21 MR. HANSLICK: I'm going to strike as  
22 nonresponsive after that's right.

23 Q (By Mr. Hanslick) Okay. We're going to look back  
24 at Exhibit 58 which is your Declaration for a minute. In  
25 paragraph 36 is where you in your Declaration summarize the

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2 SOUTHERN DISTRICT OF TEXAS  
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16 \* \* \* \* \*  
17 REPORTER'S CERTIFICATE  
18 VIDEOTAPED ORAL DEPOSITION OF  
19 MICHAEL N. SWETNAM - OCTOBER 28, 2014  
20 \* \* \* \* \*

21 I, Dawn Flippin, Certified Shorthand Reporter in and for  
22 the State of Texas, hereby certify to the following:

23 That the witness, MICHAEL N. SWETNAM, was duly sworn by  
24 the officer and that the transcript of the oral deposition is  
25 a true record of the testimony given by the witness;

That the deposition transcript was duly submitted on  
\_\_\_\_\_, 2014, to the witness for examination,  
signature and return to me by \_\_\_\_\_, 2014;

That pursuant to information given to the deposition  
officer at the time said testimony was taken, the following  
includes all counsel for all parties of record and the amount  
of time used by each party at the time of the deposition:

Edward L. Allred - (0:00)  
Attorney for Plaintiffs  
Sheldon Weisfeld - (0:00)  
Attorney for Plaintiffs

Chris Hanslick - (4:55)  
Attorney for Defendants

Edgar Saldivar - (0:00)  
Attorney for Defendants

That a copy of this certificate was served on all parties  
shown herein on \_\_\_\_\_.

I further certify that I am neither counsel for, related  
to, nor employed by any of the parties or attorneys in the  
action in which this proceeding was taken, and further that I  
am not financially or otherwise interested in the outcome of  
the action.

Certified to by me this \_\_\_\_\_ day of \_\_\_\_\_,  
2014.



*Dawn Flippin*

DAWN FLIPPIN, CSR #4045  
Expiration: 12/31/15

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